



Ridgewood Renewable Power

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Via email: drps@state.ma.us

July 25, 2005

Howard B. Bernstein
RPS Program Manager
Massachusetts Division of Energy Resources
100 Cambridge Street
Boston, MA 02114

Re: Notice of Inquiry/Initial Comments

Dear Mr. Bernstein:

On July 1, 2005, the Massachusetts Department of Energy Regulation ("DOER") and Department of Environmental Protection ("DEP") jointly issued a Notice of Inquiry (the "Notice") that, among other things, requested comments from interested parties relating to a variety of issues arising in connection with the Renewable Portfolio Standard regulations that were adopted by the DOER in 2002 (the "RPS").

This letter is the first part of a two-part response to the Notice provided by Ridgewood Renewable Power ("Ridgewood"). The second part (dealing with detailed legal and technical comments to the numerous issues presented by the Notice) will be filed subsequently.

Ridgewood is filing these comments first because they raise an important threshold issue—regulatory stability—that we believe should be addressed BEFORE any other decisions are made regarding the advisability of proceeding with the wholesale revisions of the RPS regulations contemplated by the Notice. Since the Massachusetts RPS program is arguably the most successful program in the U.S., Ridgewood believes that the manner in which issues are debated and resolved in Massachusetts are likely to have "knock-on" effect in other jurisdictions.

Ridgewood is a significant participant in the RPS program. It operates five generating facilities that provide "renewable energy certificates" (RECs) to the RPS program, including one completely new facility. Ridgewood is familiar with many other U.S. based RPS programs, including those in Maine, Connecticut, Rhode Island, Nevada and California. Moreover, Ridgewood entities have extensive experience with the Renewable Obligation ("RO") program in the U.K., a renewable energy incentive program that is generally recognized as being among the most effective programs in creating incentives for additional renewable energy generation. Ridgewood is thoroughly familiar with the requirements of project finance lenders since, through affiliates, Ridgewood has borrowed money for facility capital expenditures from a third party bank lenders on a non-recourse "project finance" basis in both the U.S. and the U.K. Ridgewood is even more familiar with the requirements of project finance equity providers since that has been its business since 1991.

Ridgewood believes that DOER's administration of the RPS regulatory process conveys an apparent indifference to the issue of regulatory stability that undermines the business confidence that is essential to the viability of the entire RPS program. However well intentioned DOER's actions may be, the pattern of using "advisory rulings" that have the effect of rewriting existing regulations and the precipitous manner in which the Notice was issued (complete with draft regulations covering the very issues on which DOER was supposedly seeking guidance) is deeply unsettling to participants and potential participants in the RPS program. Bluntly put, Ridgewood believes that DOER's actions have made future projects vastly more difficult, and may have jeopardized existing projects and projects under construction. For example, depending on the actual language contained in existing financing agreements or financing commitment letters, the mere publication of the Notice may constitute an "event of default" under such agreements or commitments. Such Notices can constitute, under the terms of typical financing arrangements, a Material Adverse Change.

Renewable generating facilities make up a small subset of the overall electric power generating industry. Because of extensive losses incurred over the last five years in New England, lenders and other potential providers of financing are extremely reluctant to provide financing to new generating projects of any type. Since renewable energy generating projects usually require incentive arrangements (such as the RPS program) to be economically competitive with traditional fossil fuel plants, any potential lender will seek to confirm that the RPS program will likely provide sufficient support to permit the project to provide repayment and return to finance providers. Since long-term electricity supply contracts are not commonly available in New England, a lender or equity investor must reach the

conclusion that the RPS program will provide predictable results BEFORE the they can assess and quantify the other risks in the proposed transaction (including the risk that additional supply of RECs may become available as other competitors are successful in qualifying to participate in the RPS through complying with the same rules as the project to which the funding is being provided). On the other hand, it becomes much more difficult (if not impossible) for a finance provider to assess the competitive risks of any project if that project is subject to the binary and non-economic risk that DOER will rewrite the basic RPS regulations in a manner that modifies the fundamental competitive analysis on which the finance provider relied in making the loan.

For the foregoing reasons relating to confidence on the part of finance providers, any actions taken by DOER having any effect (or any perceived effect) on the existing regulatory framework, should be undertaken only with the utmost caution and after a deliberate consulting process that insures that the views and the needs of industry participants (including project finance providers) are addressed and their rights protected.

As an example of regulatory restraint and consultation, Ridgewood believes that the actions of the Department of Trade and Industry (the "DTI") (the U.K. analog to the DOER under the RPS program) in adopting the RO incentive program provide an instructive comparison.

Ridgewood has significant experience with the successful portfolio standard incentive regime in the UK under the Kingdom's Renewable Obligation Order ("RO"). Ridgewood currently operates 30 qualifying generating stations in the UK fueled by landfill gas. Like the Mass RPS, the RO is structured to capitalize on the efficiencies of market forces to deliver renewable power using the least expensive technologies available. In the design of the RO regime the UK government engaged in an extensive process of consultation with market participants, engineers, electricity industry experts, trade groups and providers of finance to the electricity generating industry. The consultation, having an initial private phase followed by a public phase, took place over a period of about two years prior to the enactment of the RO and had as its objective ensuring that, to the extent possible, the legislation took into account the concerns of all parties.

The government of the UK was particularly concerned that the investment community be convinced of the government's commitment to the RO system. Since the RO system does not rely on government guarantees or contracts but rather on a variable annual portfolio target, the government was keenly aware that, so long as financing parties had any doubts about the government's intent to provide a consistent and predictable incentive

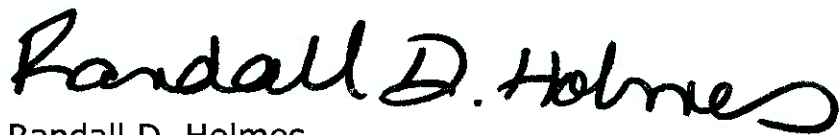
system, the billions of pounds of capital required to build the renewable generating capacity would not be available. This was partly achieved through a very public position taken by the government and repeated at every opportunity that no material changes to the program would be made.

The original legislation prescribed two predetermined reviews so that any unexpected technical flaws appearing during the operation of the system could be addressed. Each of these reviews would be preceded by a consultation process similar to that taking place prior to the enactment of the original legislation. The purpose of specifying the existence, time and protocol of the reviews was so that they could be a pre-programmed part of the original legislation and, when they occurred, would not be construed as "tinkering" on the part of the government in the incentive. This is further evidence of the government's awareness of the effect of capricious modifications.

Attention to the sensibilities of the investment community has paid off for the RO as the output of qualifying electricity has increased 83% from the original level to 10,219,793MWh, the number of qualifying plants has increased 43% representing 185 additional stations and capacity has increased 68% representing 988MW of new renewable generation capacity.

For the reasons described above, Ridgewood requests that DOER and DEP immediately withdraw the Notice before further damage is done and undertake a formal, deliberate consultation process. The objective of the consultation should be to address the matters of concern to the DOER and the DEP while also preserving the Mass RPS and the economic viability of the projects that seek to satisfy the objectives of the RPS.

Respectfully Submitted,


Randall D. Holmes